

# In the Court of Appeals of the State of Alaska

**Anthony Michael Pisano,**  
Appellant,

v.

**State of Alaska,**  
Appellee.

Court of Appeals No. **A-13549**

## **Order**

Date of Order: **January 31, 2020**

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Trial Court Case No. **3AN-14-07343CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

This case is before us for a fourth time on a bail appeal. The defendant, Anthony Michael Pisano, is charged, *inter alia*, with three counts of first-degree murder and one count of third-degree assault and is awaiting trial. We have previously remanded Pisano's case three times to the trial court to reconsider the monetary component of Pisano's bail.

Prior to Pisano's first bail appeal, the trial court set an all-cash monetary bail of \$1,300,000 — comprised of a \$900,000 cash performance bond and a \$400,000 cash appearance bond. The court also imposed the following conditions of bail release: 24-hour supervision by a third-party custodian; 24-hour electronic monitoring through Alaska Pretrial Services; and house arrest with passes only for verified court, medical, and attorney appointments.

Pisano appealed the monetary component of his bail. Based on the record that was then before us, we were unable to determine why the court concluded that the monetary amounts imposed were the least restrictive amounts necessary to reasonably assure Pisano's appearance and the safety of the public, particularly given the other

components of Pisano's supervision plan.<sup>1</sup> We remanded Pisano's case to the trial court to reconsider the monetary component of Pisano's bail.<sup>2</sup>

Following additional hearings on remand, the court reduced Pisano's monetary bail to a \$500,000 cash performance bond and a \$250,000 cash appearance bond.

In Pisano's second bail appeal, we held that the trial court had erred on remand in speculating about the possibility that Pisano could raise bail money through financial contributions from crowd-funding sources.<sup>3</sup> We also expressed continuing concerns about the high monetary bail — and in particular, the large, all-cash appearance bond.<sup>4</sup>

Following additional hearings, the court declined to lower Pisano's monetary bail. As a result, bail remained set at \$750,000 — comprised of a \$500,000 cash performance bond and a \$250,000 cash appearance bond — in addition to all the previously-imposed conditions of bail.

In Pisano's third bail appeal, we directed the trial court to convert Pisano's appearance bond from an all-cash bond to a cash-corporate bond.<sup>5</sup> Additionally, in light

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<sup>1</sup> *Pisano v. State*, Court of Appeals File No. A-13089 (Order dated May 24, 2018), at 6-7.

<sup>2</sup> *Id.* at 10-11.

<sup>3</sup> *Pisano v. State*, Court of Appeals File No. A-13289 (Order dated Jan. 16, 2019), at 3-4.

<sup>4</sup> *Id.* at 5-7.

<sup>5</sup> *Pisano v. State*, Court of Appeals File No. A-13453 (Order dated Sept. 23, 2019), at 5-8.

of errors in the trial court's factual findings, we again remanded Pisano's case for reconsideration of the total monetary bail amount imposed.<sup>6</sup>

Following our most recent order, the trial court on remand converted Pisano's \$250,000 all-cash appearance bond to a cash-corporate bond. The court held an additional hearing, and in a written order that followed, the court maintained Pisano's bail — a \$500,000 cash performance bond and a \$250,000 cash-corporate appearance bond.

In the current appeal, Pisano argues that the trial court failed to adequately reconsider the total amount of his monetary bail, as directed by our most recent order.

We have reviewed the bail hearing on remand and the trial judge's latest order. At the hearing, the judge heard arguments from both parties about the proper amount of monetary bail; no new evidence was presented. The court stated that it would take the matter under advisement.

In its subsequent written order, the court expressly stated that it had reconsidered the total amount of monetary bail in the case, and had concluded that the amounts set were the least restrictive amounts necessary to reasonably assure Pisano's appearance and the safety of the public. The court acknowledged that Pisano had disclosed that extended family members provided the funds to retain private counsel, but the court concluded that Pisano's financial status remained inconclusive absent any indication of the specific monetary amounts or sources.

As we stated in our order on Pisano's first bail appeal, the determination of appropriate bail conditions is in large measure a discretionary function of the trial

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<sup>6</sup> *Id.* at 12.

court.<sup>7</sup> Thus, absent a legal error, we review a trial court’s decision to impose a particular bail amount for an abuse of discretion.<sup>8</sup> Under this standard, an appellate court must uphold the trial judge’s decision unless it was “arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive.”<sup>9</sup>

Here, having reviewed the entire record of bail proceedings over the life of this case, we cannot say that it was an abuse of discretion for the court to impose this monetary bail. While we agree with the principles discussed in the dissent, and we recognize that other judges might reasonably have imposed a lower monetary bail given the other protective measures in place for Pisano’s release, the trial court’s imposition of a high monetary bail in this triple homicide case is not manifestly unreasonable.

Accordingly, we **AFFIRM** the trial court’s bail order.

Entered at the direction of the Court.

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<sup>7</sup> See *Pisano v. State*, Court of Appeals File No. A-13089 (Order dated May 24, 2018), at 5.

<sup>8</sup> AS 12.30.030(a).

<sup>9</sup> See *Wahl v. State*, 441 P.3d 424, 430 (Alaska 2019) (quotations and citations omitted).

Judge WOLLENBERG, dissenting.

Article I, section 11 of the Alaska Constitution entitles criminal defendants “to be released on bail, except for capital offenses when the proof is evident or the presumption great[.]”<sup>1</sup> Although criminal defendants do not have an absolute right to monetary bail in an amount they can post,<sup>2</sup> both the United States and Alaska Constitutions prohibit the imposition of “excessive” bail.<sup>3</sup> Excessive bail is that which goes beyond the amount actually necessary to fulfill the purposes of bail — *i.e.*, to reasonably assure the defendant’s appearance and the safety of the community.<sup>4</sup> Stated differently, the court is required to impose the “least restrictive condition or conditions that will reasonably assure the person’s appearance and protect the victim, other persons, and the community.”<sup>5</sup>

I am not convinced that, over the life of these appeals, the superior court employed an analysis that holistically examined the “least restrictive” bail conditions that

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<sup>1</sup> At the most recent bail hearing in this case, the prosecutor stated that a trial court could set a “no bail” order in a first-degree murder case. But we have previously ruled that a “no bail” presumption violates the Alaska Constitution. *Hamburg v. State*, 434 P.3d 1165 (Alaska App. 2018).

<sup>2</sup> *Gilbert v. State*, 540 P.2d 485, 486 n.12 (Alaska 1975) (citing *Reeves v. State*, 411 P.2d 212 (Alaska 1966)).

<sup>3</sup> U.S. Const. amend. VIII; Alaska Const. art. I, § 12.

<sup>4</sup> See *Stack v. Boyle*, 342 U.S. 1, 5 (1951); *Doe v. State*, 487 P.2d 47, 51 (Alaska 1971); *Torgerson v. State*, 444 P.3d 235, 237 (Alaska App. 2019).

<sup>5</sup> Former AS 12.30.011(b) (2017). Although Pisano’s case is governed by the bail statute in place in 2017, see *Pisano v. State*, Court of Appeals File No. A-13089 (Order dated May 24, 2018), at 10, the “least restrictive” language also appears in the current bail statute. See AS 12.30.011(b) (2019).

are necessary to reasonably assure Pisano's appearance and the safety of the victim, other persons, and the community. I therefore dissent from the Court's decision to affirm the trial court's latest bail order.

Beginning in our first bail order in this case, we expressed concern that the trial court was evaluating Pisano's monetary bail in a vacuum, rather than as a component of the structured and restrictive supervision package it had approved.<sup>6</sup> The trial court's latest order does not provide sufficient assurance that this analysis has occurred. In the order, the court stated that it had "reconsidered the total amount of monetary bail in this case," but only "in light of the \$250,000 cash or corporate appearance bond and the \$500,000 cash performance bond." The court did not mention the other components of Pisano's pretrial release plan.

Pisano, who has no prior convictions, will be subject to 24-hour house arrest with electronic monitoring and the constant supervision of a third-party custodian. Pisano will be allowed to leave the house only to attend court and verified medical and legal appointments. Pisano has also agreed not to possess any weapons, and a representative from Alaska Pretrial Services has inspected and approved the home in which Pisano intends to stay. Pisano is precluded from having contact with the families of the victims, and he is precluded from leaving the State without the court's permission.

In its order, the court never mentioned these other aspects of the pretrial release plan, and what purpose each of the three performance protections — electronic monitoring, live monitoring, and the \$500,000 cash performance bond — is designed to

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<sup>6</sup> See *Pisano v. State*, Court of Appeals File No. A-13089 (Order dated May 24, 2018), at 7, 9; see also *Pisano v. State*, Court of Appeals File No. A-13289 (Order dated Jan. 16, 2019), at 6.

serve within this structured supervision plan. The court also did not explain why correcting the errors we identified in our last order did not affect its determination of the appropriate level of monetary bail.

I recognize that the determination of bail is entrusted to the sound discretion of the trial court and that judges may have a range of reasonable responses to a given bail request. But that presumes that the proper analysis has been performed. Because I am not convinced that such an examination occurred in this case, and I am concerned that the amount of bail is being used as a means of confining Pisano prior to trial in contravention of the Alaska Constitution, I would remand with directions to the trial court to either lower the monetary bail or to provide a further explanation of why the monetary bail imposed — and not something less — is necessary to reasonably assure Pisano’s appearance and protect the victim, other persons, and the community, given the entire bail release plan.<sup>7</sup>

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<sup>7</sup> See AS 12.30.006(f) (requiring the court to issue written or oral findings that explain the reasons for imposing the particular conditions of release); see also *Brangan v. Commonwealth*, 80 N.E.3d 949, 964-66 (Mass. 2017) (recognizing that a “particularized statement” as to why no less restrictive conditions will suffice, including “how the bail amount was calculated,” is appropriate in light of due process concerns and “because holding a defendant on an unaffordable bail amount defeats bail’s purpose of securing pretrial liberty”).

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